

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli, Co-chair
Hon. Michael Nash, Co-chair
John A. Sweeney, Juvenile Projects Attorney, 415-865-7732

DATE: September 19, 2003

SUBJECT: Juvenile Law: Restraining Orders (amend Cal. Rules of Court, rule
1429.5; revise form JV-245) (Action Required)

Issue Statement

Assembly Bill 3028 was chaptered on September 27, 2002. The bill amended Welfare and Institutions Code section 213.5 to permit a court to reissue a temporary protective order in a juvenile case, on its own motion or by affidavit of the party seeking the order, when it was not possible to achieve notice within the statutory limits. The proposed amendment to rule 1429.5 conforms it to Welfare and Institutions Code section 213.5. Proposed revisions to form JV-245 will allow the form to be used by itself, without using either the dependency or wardship petition forms as a cover sheet, and to clarify that a party may use form JV-245 to request the issuance of a restraining order.

Recommendation

The Family and Juvenile Advisory Committee recommends that the Judicial Council, effective January 1, 2003:

1. Amend rule 1429.5 to specify the procedure for the reissuance of a temporary restraining order; and
2. Revise form JV-245 to clarify its use in a request for issuance of a restraining order.

The texts of the proposed amended rule and revised form are attached at pages 4–8.

Rationale for Recommendation

The proposed amendment to rule 1429.5(g)(2) would conform the rule to Welfare and Institutions Code section 213.5(c) as amended by AB 3028. Before the passage of that bill, if the person to be restrained could not be served within the time required,

the party seeking the protective order was required to file a motion to request that the court issue a subsequent temporary restraining order.

Welfare and Institutions Code section 213.5(c) now states: “The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to [*sic*] reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order.”

Rule 1429.5 currently requires a person seeking a restraining order in writing to submit the application to the court on form JV-245 accompanied by either the dependency or wardship petition forms, which are optional forms. However, form JV-245 is a mandatory form. It would be inconsistent and confusing to continue to require the use of an optional form to serve as the coversheet to a mandatory form. For this reason, form JV-245 would be revised as a standalone form.

The committee also proposes revising form JV-245 to add language to the personal conduct orders section so that it tracks the language in form JV-250.

Alternative Actions Considered

Because the proposed changes are necessary to make the rule and form consistent with state statute, no other alternatives were considered.

Comments From Interested Parties

The invitation to comment was initially circulated with forms JV-100, JV-110, and JV-600, which were to be used as a coversheet to form JV-245. Subsequently, the Rules and Projects Committee observed that while the proposed coversheet forms were optional forms, form JV-245 was mandatory. To avoid this inconsistency, staff to the Rules and Projects Committee suggested making form JV-245 a standalone form on September 10, 2003. The rule would be amended to clarify the proper use of form JV-245 and to remove references to the dependency and wardship petition forms.

The initial invitation to comment on the original proposal, which included references to forms JV-100, JV-110 and JV-600, was circulated from April 17, 2003, through July 1, 2003, to the regular mailing lists and to juvenile and criminal court judges, trial court administrators, and attorneys representing the various parties in juvenile and criminal matters. Seven commentators responded. Three commentators agreed with the revisions as originally proposed. Four commentators agreed with the revisions only if modified.

Two commentators suggested adding the phrase “Restraining Order Requested” to the caption box of form JV-600 so that it would be consistent with revised forms JV-

100 and JV-110. The committee initially agreed that the text should be inserted, but because form JV-245 is being proposed as a standalone form, the change to the caption box of form JV-600 is unnecessary.

One commentator suggested that the title of form JV-245 should be changed to match the language of the statute. The committee agreed that “Declaration” in the caption should be replaced with “Affidavit” so that the same terminology appears in the rule and form as appears in the statute.

One commentator suggested that the circulated forms should include a notice of the availability of accommodations for disabled persons who are making court appearances. Three advisory committees—Access and Fairness, Civil and Small Claims, and Family and Juvenile Law—are jointly reviewing whether Judicial Council forms should include notice. The Juvenile Law Subcommittee agreed with the commentator that such notices regarding accommodations should be provided to disabled persons, but felt that the committee should nevertheless wait for the result of the joint review.

The comment chart is attached at pages 9–10. The relevant portions of Welfare and Institutions Code section 213.5 are attached at pages 11–12.

Implementation Requirements and Costs

Implementation of the revised forms would require courts to incur standard reproduction costs.

Attachments

Rule 1429.5 of the California Rules of Court is amended, effective January 1, 2004, to read:

Rule 1429.5. Restraining orders

(a) ***

(b) **[Application (§§ 213.5, 304)]** Application for restraining orders may be made orally at any scheduled hearing regarding the child who is the subject of a petition under section 300, 601, or 602, or may be made by written application, or may be made on the court's own motion. The written application must be submitted on: Judicial Council form *Application and Declaration Affidavit for Restraining Order* (JV-245).

~~(1) Judicial Council forms *Juvenile Dependency Petition* (JV 100) and *Application and Declaration for Restraining Order* (JV 245); or~~

~~(2) Judicial Council forms *Juvenile Wardship Petition* (JV 600) and *Application and Declaration for Restraining Order* (JV 245).~~

(c)-(f) ***

(g) **[Order to show cause and reissuance (§ 213.5(c))]** When a temporary restraining order is granted without notice, the matter must be made returnable on an order to show cause why the order should not be granted, no later than 15 days or, on a showing of good cause, 20 days from the date the temporary restraining order is granted.

(1) On the motion of the person seeking the restraining order or on its own motion, the court may shorten the time for service of the order to show cause on the person to be restrained ~~of the order to show cause.~~

(2) ~~When a temporary restraining order is granted without notice, and service on the restrained person has not been accomplished, or when the hearing must be continued for some other reason, the court may reissue the temporary restraining order pursuant to the procedures in section 527 of the Code of Civil Procedure. The court may, on its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order must state on its face the date of expiration of the order.~~ Judicial Council form

1 *Application and Order for Reissuance of Order to Show Cause* (FL-
2 306/JV-251) must be used for this purpose.

3
4 **(h)-(l) *****

CALIFORNIA
WELFARE AND INSTITUTIONS CODE
SECTION 213.5

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court issuing an ex parte order pursuant to this subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to reissue an order previously issued

and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d)-(l) ***

PETITIONER OR ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 8 9/22/03
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBERS: JUVENILE: FAMILY:
APPLICATION AND AFFIDAVIT FOR RESTRAINING ORDER — JUVENILE	RELATED CASES (if any):

1. The child is
- ☐ a dependent of the court under Welfare and Institutions Code section 300; or
 - ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 300; or
 - ☐ a ward of the court under Welfare and Institutions Code section 601; or
 - ☐ a ward of the court under Welfare and Institutions Code section 602; or
 - ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 601; or
 - ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 602.
2. Petitioner is the
- ☐ mother.
 - ☐ father.
 - ☐ child.
 - ☐ guardian.
 - ☐ social worker.
 - ☐ probation officer.
 - ☐ present caretaker of child.
 - ☐ court-appointed special advocate.
 - ☐ representative of Indian child's tribe.
 - ☐ other (state interest or relationship to child):
3. **PERSONS TO BE PROTECTED** (List full names and ages of all persons to be protected; also list relationship to child in item 1):
- Name: _____ Age: _____ Relationship (child, parent, legal guardian, current caretaker): _____

4. a. **PERSON TO BE RESTRAINED** (full name):

b. DESCRIPTION:	
Sex: <input type="checkbox"/> M <input type="checkbox"/> F	Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

5. The person to be restrained has (check at least one box):
- ☐ assaulted or attempted to assault one or more of the persons to be protected.
 - ☐ caused, threatened, or attempted bodily injury on one or more of the persons to be protected.
 - ☐ caused one or more of the persons to be protected to fear physical or emotional harm.
 - ☐ sexually assaulted or attempted to sexually assault one or more of the persons to be protected.
 - ☐ stalked one or more of the persons to be protected.
 - ☐ other (specify): _____

☐ as described in item 7

☐ as described in attached report by: ☐ police officer ☐ social worker ☐ probation officer ☐ other

CASE NAME: _____	CASE NUMBERS: JUVENILE: FAMILY:
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6. PERSONAL CONDUCT ORDERS

- a. ☐ Restrained person must not harass, molest, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, destroy personal property, disturb the peace of, keep under surveillance, or block movements of any person named in item 3.
- b. ☐ Restrained person must not contact (either directly or indirectly), or telephone, or send messages, mail, or e-mail to any person named in item 3
- (1) ☐ except for the brief and peaceful contact as required for court ordered visitation of children, unless a criminal protective order says otherwise.
- (2) ☐ except for peaceful written contact through a process server or another person for legal papers related to a court case.
- c. ☐ Restrained person must move immediately from (address):

and take only personal clothing and effects.

- d. ☐ Restrained person must stay at least (specify): _____ yards away from the following persons and places (the addresses of these places are optional and may be kept confidential):
- (1) ☐ Protected persons named in item 3.
- (2) ☐ Protected person's residence (address optional):
- (3) ☐ Protected person's place of work (address optional):
- (4) ☐ Child's school or place of child care (address optional):
- (5) ☐ Protected person's vehicle (description optional):
- (6) ☐ Other (specify):
(address optional):
- e. ☐ Restrained person must sell or give up any firearms that he or she has or controls for a period not to exceed the duration of the restraining order. Describe any use of or threat regarding use of firearms in item 7. Petitioner believes the restrained person has the following firearms (specify):
- f. ☐ The child is a ward or the subject of a petition under section 601 or 602 and must not contact, threaten, stalk, or disturb the peace of (list names):
- g. ☐ Other orders:

7. DESCRIPTION OF CONDUCT (describe in detail the most recent incidents supporting this application or attach copies of reports of law enforcement officers, social workers, probation officers, or other professional persons):

CASE NAME: _	CASE NUMBERS: JUVENILE: FAMILY:
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8. ☐ **LAW ENFORCEMENT**

The following law enforcement agencies must receive copies of orders.

Law Enforcement Agency

Address

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)

SPR03-35**Juvenile Law: Petitions and Restraining Orders**

(amend Cal. Rules of Court, rule 1429.5; revise Judicial Council forms JV-245, and JV-600)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Ronald L. Bauer Superior Court of California, County of Orange Rules and Forms Committee	AM	Y	<p>1. Welf. & Inst. Code, § 213.5 refers to the filing of an affidavit. Form JV-245 is entitled “Application and Declaration for Restraining Order.” Should either the statute or the form be amended to use the same term?</p> <p>2. JV-100 and JV-110: The statement “(See important notice on page 2)” at the bottom of page one of each form should be more prominent.</p>	<p>1. Agree to replace “declaration” in the caption with “affidavit” so same terminology appears in the rule and form as appears in the statute.</p> <p>2. The proposed revisions to these forms have been withdrawn because they will no longer be used as cover sheets for form JV-245.</p>
2.	Mr. Saul Bercovitch State Bar of California Family Law Section, Executive Committee	A	Y	<i>No specific comment.</i>	No response required.
3.	Hon. Charles W. Campbell Superior Court of California, County of Orange	A	N	<i>No specific comment.</i>	No response required.
4.	Mr. Robert Gerard President Orange County Bar Association	A	Y	Concurs with the reasons for the proposed changes.	No response required.
5.	Mr. Ken Kresse Executive Director California Center for Law and the Deaf	AM	Y	JV-100 and JV-110: The forms should include a notice of availability of accommodations on page 2.	Three advisory committees—Access and Fairness, Civil and Small Claims, and Family and Juvenile Law—are jointly reviewing whether Judicial Council forms should include notice that accommodations are available for disabled persons who are making court appearances.

SPR03-35**Juvenile Law: Petitions and Restraining Orders**

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
6.	Mr. Stephen Love Executive Officer Superior Court of California, County of San Diego	AM	N	<p>1. JV-600: Caption — after “§ 213.5” insert “Restraining Order Requested.”</p> <p>2. JV-600: Item 1(a) — change first letter in “No.” to lowercase.</p> <p>3. JV-600: Item 1(n) — insert a period after the word “ancestry.”</p> <p>4. JV-100: Bottom of page one insert period after sentence “Other children are listed on <i>Additional Children Attachment</i> (form JV-101).”</p>	<p>1. The proposed revision has been withdrawn because form JV-600 will no longer be used a coversheet to form JV-245.</p> <p>2. This revision is addressed in another proposal.</p> <p>3. This revision is addressed in another proposal.</p> <p>4. The proposed revisions to this form have been withdrawn.</p>
7.	Ms. Tricia McCoy Supervising Clerk, Juvenile Division Superior Court of California, County of Kern	AM	N	<p>1. JV-600: Item 1(a) requires more space to list the violations.</p> <p>2. JV-600: Caption — insert box for “213.5—Restraining Order Requested” so JV-600 consistent with JV-100.</p>	<p>1. This revision is addressed in another proposal.</p> <p>2. The proposed revision has been withdrawn because form JV-600 will no longer be used a coversheet to form JV-245.</p>